

No. 77-521

Supreme Court, U. S.
FILED

DEC 2 1977

MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States
OCTOBER TERM, 1977

GENERAL MOTORS CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT**

BRIEF FOR THE RESPONDENTS IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,

BARBARA ALLEN BABCOCK,
Assistant Attorney General,

WILLIAM KANTER,
NEIL H. KOSLOWE,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statutes involved	2
Statement	4
Argument	12
Conclusion	16

CITATIONS

Cases:

<i>Ford Motor Co. v. Coleman</i> , 402 F. Supp. 475, affirmed, 425 U.S. 927	14
<i>United States v. Ford Motor Co.</i> , 421 F. Supp. 1239, appeals pending, C.A. D.C., Nos. 76-2062, 76-2063, 77-1378	14
<i>United States v. General Motors Corp.</i> , 513 F.2d 420	5, 13

Statutes:

The National Traffic and Motor Vehicle Safety Act of 1966, 80 Stat. 718, as amended, 15 U.S.C. (and Supp. V) 1381 <i>et seq.</i>	4
15 U.S.C. 1381	2-3
15 U.S.C. 1391	3
15 U.S.C. 1391(1)	3, 5
15 U.S.C. 1391(11)	5
15 U.S.C. (1970 ed. and Supp. V) 1398	14

Statutes—Continued	Page
15 U.S.C. (Supp. V) 1398(a)	5, 14
15 U.S.C. (Supp. V) 1399(a)	5
15 U.S.C. (Supp. V) 1401(a)(3) (B)	3
15 U.S.C. (1970 ed.) 1402(e)	8
15 U.S.C. (Supp. V) 1412(a)	3-4
15 U.S.C. (Supp. V) 1412(a)(2)	4
15 U.S.C. (Supp. V) 1412(b)	8
15 U.S.C. (Supp. V) 1415(c)(1)	14

In the Supreme Court of the United States

OCTOBER TERM, 1977

—
No. 77-521

GENERAL MOTORS CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

—
**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT**
—

BRIEF FOR THE RESPONDENTS IN OPPOSITION

—
OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A, pp. 1a-34a) is reported at 561 F.2d 923. The opinion of the district court denying cross-motions for summary judgment (Pet. App. D, pp. 38a-47a) is reported at 65 F.R.D. 115. The post-trial memorandum of findings and conclusions of the district court (Pet. App. E, pp. 48a-58a) is unreported.

(1)

JURISDICTION

The judgment of the court of appeals was entered on June 28, 1977 (Pet. App. B, p. 35a). A timely petition for rehearing was denied on August 18, 1977 (Pet. App. C, pp. 36a, 37a). The petition for a writ of certiorari was filed on October 6, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Where the existence of a defect in thousands of cars is conceded, and the defect is known to cause sudden and total loss of steering control, may summary judgment be had on the question whether the defect "relates to motor vehicle safety" within the meaning of the National Traffic and Motor Vehicle Safety Act of 1966.

STATUTES INVOLVED

The National Traffic and Motor Vehicle Safety Act of 1966, 80 Stat. 718, as amended, 15 U.S.C. (and Supp. V) 1381 *et seq.*,¹ provides in pertinent part:

15 U.S.C. 1381.

Congress hereby declares that the purpose of this chapter is to reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents. Therefore, Congress determines

¹ In 1974, after the administrative order reviewed by the courts below was issued, the Act was amended in respects not pertinent here.

that it is necessary to establish motor vehicle safety standards for motor vehicles and equipment in interstate commerce; to undertake and support necessary safety research and development; and to expand the national driver register.

15 U.S.C. 1391.

As used in this subchapter—

(1) "Motor vehicle safety" means the performance of motor vehicles or motor vehicle equipment in such a manner that the public is protected against unreasonable risk of accidents occurring as a result of the design, construction or performance of motor vehicles and is also protected against unreasonable risk of death or injury to persons in the event accidents do occur, and includes nonoperational safety of such vehicles.

15 U.S.C. (Supp. V) 1401(a)(3).

* * * * *

(B) As used in this subsection, "motor vehicle accident" means an occurrence associated with the maintenance, use, or operation of a motor vehicle or item of motor vehicle equipment in or as a result of which any person suffers death or personal injury, or in which there is property damage.

15 U.S.C. (Supp. V) 1412.

(a) If through testing, inspection, investigation, or research carried out pursuant to this chapter, or examination of communications under

section 1418(a)(1) of this title, or otherwise, the Secretary determines that any motor vehicle or item of replacement equipment—

* * * * *

(2) contains a defect which relates to motor vehicle safety;

he shall immediately notify the manufacturer of such motor vehicle or item of replacement equipment of such determination, and shall publish notice of such determination in the Federal Register. The notification to the manufacturer shall include all information upon which the determination of the Secretary is based. Such notification (including such information) shall be available to any interested person, subject to section 1418(a)(2)(B) of this title. The Secretary shall afford such manufacturer an opportunity to present data, views, and arguments to establish that there is no defect or failure to comply or that the alleged defect does not affect motor vehicle safety; and shall afford other interested persons an opportunity to present data, views, and arguments respecting the determination of the Secretary.

STATEMENT

1. The National Traffic and Motor Vehicle Safety Act of 1966, 80 Stat. 718, as amended, 15 U.S.C. (and Supp. V) 1381 *et seq.*, authorizes the Secretary of Transportation, *inter alia*, to direct the manufacturer of a motor vehicle to notify purchasers of the vehicle if the Secretary determines that it "contains a defect which relates to motor vehicle safety." 15 U.S.C.

(Supp. V) 1412(a)(2). If the manufacturer fails to notify the purchasers of the vehicle as directed, the United States may bring an enforcement action in federal district court seeking compliance with the order and the imposition of a civil penalty. 15 U.S.C. (Supp. V) 1398(a) and 1399(a). In the enforcement proceeding, the question whether the vehicle contains a "defect" related to "motor vehicle safety" is determined by the district court. See *United States v. General Motors Corp.*, 518 F. 2d 420, 438 (C.A. D.C.).

The term "defect" is defined in the Act as "any defect in performance, construction, components, or materials, in motor vehicles * * *." 15 U.S.C. 1391 (11). In this enforcement proceeding brought against petitioner, there is no longer any dispute that the failure of the "steering pitman arm" in the motor vehicle in question is a "defect" within the meaning of the Act. The issue in this case rather involves whether this particular defect relates to "motor vehicle safety," *i.e.*, whether it relates to "the performance of motor vehicles * * * in such a manner that the public is protected against unreasonable risk of accidents * * *." 15 U.S.C. 1391(1).

2. During model years 1959 and 1960, petitioner General Motors Corporation manufactured for sale 284,456 Cadillac cars, approximately 43,400 of which were still in service when this action began (App. 571).² Each of these cars was equipped with a "steer-

² The designation "App." refers to the joint appendix filed in the court of appeals.

ing pitman arm" whose expected life was 48 years (App. 443). "The pitman arm is a critical component of the steering system. It transfers the angular motion of the steering wheel and shaft to lateral movement of the drag link and tie rods which turn the front wheels. When the pitman arm fails, steering control is suddenly lost" (Pet. App. A, p. 4a).

In 1972, the National Highway Traffic Safety Administration, which is charged with carrying out the responsibilities of the Secretary of Transportation under the Safety Act, received consumer complaints alleging sudden pitman arm failure and sudden loss of steering control in 1959-1960 Cadillacs (Pet. App. A, p. 4a). The Administration decided to investigate the complaints and asked petitioner for information about the pitman arm in 1959-1960 Cadillacs (*ibid.*). Petitioner advised the Administration that as of September 1972 it had sold approximately six times as many replacement pitman arms to its dealers for 1959-1960 Cadillacs as for prior and subsequent years' models and that it did "not have information providing a reason for this difference" in replacement sales (Gov't Exh. 4, tab 24, pp. 37-38).⁹ Furthermore, petitioner advised the Administration that on June 10, 1960, it changed the design specifications for the

pitman arm in order "to improve performance" (Pet. App. A, p. 5a).

During the next several months the Administration requested and obtained additional information from petitioner and investigated some of the consumer complaints alleging pitman arm failure (Pet. App. A, p. 5a). The Administration also hired a private testing company to examine the pitman arm of a 1959-1960 Cadillac manufactured before June 10, 1960 (Gov't Exh. 3, tab 15). As a result of these efforts, the Administration learned that the pitman arm in 1959-1960 Cadillacs manufactured before June 10, 1960, was subject to "fatiguing" under heavy loads, i.e., cracks developed in the pitman arm when the steering wheel was turned to the full extreme, and that the "fatiguing" process ultimately caused the pitman arm to break into two pieces, resulting in sudden and total loss of steering control (*ibid.*).

In September 1973, the Administration informed petitioner that it had found "that the pitman arm on 1959 and 1960 Cadillacs is subject to sudden and catastrophic failure resulting in a loss of steering control," and that it had reached an initial determination "that a defect which relates to motor vehicle safety exists with respect to these 1959 and 1960 Cadillacs" (App. 597-598). The next month the Administration conducted a public hearing on the matter, in which petitioner participated (Pet. App. A, p. 5a). Finally, after carefully reviewing its entire file, the Administrator notified petitioner on January 10, 1974, that he had determined that "a defect

⁹ The actual figures were (Pet. App. A, p. 5a n. 3):

Model Year	Pitman Arms
1957-1958	4,519
1959-1960	26,424
1961-1962	4,423

which relates to motor vehicle safety exists with respect to the steering pitman arm on 1959-1960 model year Cadillac automobiles, in that these pitman arms are subject to sudden, and catastrophic failure, causing loss of steering control, and resulting in an unreasonable risk of accidents, deaths, and injuries to persons using the highways" (*ibid.*). The Administrator directed petitioner to notify owners of the affected Cadillacs of the safety-related defect and urged petitioner to recall the cars for pitman arm replacement at its expense (Pet. App. A, pp. 5a-6a).⁴

Instead of notifying the affected owners of the pitman arm defect, petitioner filed suit the next day, January 11, 1974, to set aside the Administrator's order. The government filed suit one month later to enforce the Administrator's order. The two cases were consolidated in the United States District Court for the District of Columbia (Pet. App. A, p. 7a).⁵

⁴ At the time the Administrator issued his order, the Safety Act required only notification of safety-related defects, not free replacement. 15 U.S.C. (1970 ed.) 1402(e). The Act as amended now requires both. 15 U.S.C. (Supp. V) 1412(b).

⁵ Petitioner had filed its suit in the United States District Court for the Eastern District of Michigan (Pet. App. A, p. 6a). The district court immediately issued a temporary restraining order against enforcement of the Administrator's order but later vacated the temporary restraining order and denied a preliminary injunction (*ibid.*). Later the court transferred the suit to the United States District Court for the District of Columbia, where it was consolidated with the government's enforcement action (Pet. App. A, p. 7a).

3. On March 5, 1974, the government moved for summary judgment (App. 33-34).⁶ The government filed the entire administrative record and contended that on the basis of the abnormally and inexplicably high replacement sales for pitman arms in 1959-1960 Cadillacs, the results of testing by a private company, and other uncontradicted evidence, it was clear that these Cadillacs contained a "defect" within the meaning of the Safety Act. Furthermore, the government contended that since this defect caused sudden and total loss of steering control, the defect "relate[d] to motor vehicle safety" within the meaning of the Safety Act.

The district court denied the government's motion for summary judgment (Pet. App. D, pp. 38a-47a).⁷ The court agreed with the government's first contention, that the Cadillacs contained a "defect" within the meaning of the Safety Act (Pet. App. D, p. 42a).⁸ The court also acknowledged that "[t]here is a certain appeal to the government's argument that a defect which may result in a loss of steering control is, *ipso facto*, a safety-related defect under the Act. One need only ask whether he would consider loss of steering control, even at a very slow speed, a reasonable or unreasonable risk" (Pet. App. D, p. 45a). Nonethe-

⁶ Petitioner subsequently moved for summary judgment as well (App. 47-48).

⁷ The district court also denied petitioner's motion for summary judgment (Pet. App. D, pp. 45a-46a).

⁸ The district court concluded that "[t]he test results are sufficient to indicate such a defect" (Pet. App. D, p. 42a).

less, the district court ruled that the safety-relatedness of the defect in these Cadillacs necessarily was an issue of fact, and it ordered a trial (*ibid.*).

At trial the government presented expert testimony on the danger of sudden loss of steering, at low, moderate, and high speeds, and it also presented expert testimony to establish that pitman arm failure could occur at any speed (App. 119-137, 153-171, 186-212, 224-255). In this regard, the government presented, *inter alia*, the testimony of a driver who had experienced sudden loss of steering in a 1960 Cadillac due to pitman arm failure while making a right-hand turn at 10 to 15 miles per hour (Pet. App. D, pp. 55a-56a).*

Petitioner announced at trial that it would not contest the district court's prior finding of "defect" in the 1959-1960 model year Cadillacs (App. 113). However, it offered testimony that pitman arm failure could occur essentially only during low speed maneuvers (such as five mile-per-hour "U-turns," which subject the pitman arm to high stress from the full turn of the steering wheel), and a prediction that during the continued life of 1959-1960 Cadillacs loss of steering control due to pitman arm failure would not be dangerous (Pet. App. D, pp. 56a-57a).

* As the district court summarized this driver's experience, "the steering on her 1960 Cadillac failed without warning as she was making a right hand turn, and her vehicle proceeded diagonally into the curb on the opposite side of the street into which she was turning. Fortunately the oncoming traffic lane was empty so there was no collision" (Pet. App. D, pp. 55a-56a).

The district court found that the parties' testimony concerning pitman arm failure at moderate or high speeds to be a "stand-off" (Pet. App. D, p. 55a). It also found that the government's evidence of past pitman arm failure to be offset by petitioner's prediction that future loss of steering control due to pitman arm failure would not be dangerous (Pet. App. D, pp. 56a-57a). On the basis of these findings, the district court concluded that the government had not carried its burden of showing by a preponderance of the evidence that the defect in 1959-1960 Cadillacs was safety-related within the meaning of the Safety Act, and it set aside the Administrator's order (Pet. App. D, pp. 57a-58a).

4. The court of appeals, with one judge dissenting in part, reversed the district court's denial of the government's motion for summary judgment and remanded for determination of the appropriate sanction. The majority pointed out, in a brief *per curiam* opinion, that "[t]he evidence is uncontradicted that General Motors sold six times as many pitman arm replacement [sic] for the 1959-60 Cadillac models as for adjacent model years; that steering pitman arm failures have occurred while these models were being driven; and that when the steering pitman arm fails, the driver loses control of the car" (Pet. App. A, p. 2a). The court held that under the Safety Act, "these uncontradicted facts" demonstrated that the admitted defect in 1959-1960 Cadillacs was safety-related (*ibid.*).

In an opinion dissenting in part and concurring in part, Judge Leventhal also expressed the view that the judgment of the district court should have been reversed, but because of errors of law in the post-trial opinion rather than because of its denial of summary judgment (Pet. App. A, pp. 15a-16a, 32a). He concluded that the district court's post-trial opinion reflected "an incorrect allocation of the burden of proof," and that "[a]pplication of the correct standard" showed that the evidence presented by petitioner "is incapable of carrying GM's burden of rebuttal" (Pet. App. A, p. 32a).

ARGUMENT

The court of appeals correctly held that summary judgment was appropriate in the circumstances of this case. That holding, which was based upon the unique nature of the defect involved in this particular case, states no rule of general applicability and does not warrant review by this Court.

Contrary to petitioner's contention (Pet. 13-15), the court of appeals has not adopted a "*per se* rule" precluding a manufacturer from introducing evidence on the question whether a known defect relates to "motor vehicle safety" within the meaning of the Safety Act. The court of appeals simply rejected the notion, underlying the district court's first opinion and expressed here by petitioner, that district courts have an "obligation" in all Safety Act cases "to conduct a *de novo* trial" on the issue of safety-relatedness (Pet. 14). There may be cases in which a

full trial will be necessary. But in a case such as this, where the existence of a defect in thousands of cars is conceded, the incidence of defect is shown by undisputed facts to be approximately six times greater than for other car models, and the defect is known to cause sudden and complete loss of steering control, summary judgment on the question whether the defect "relates to motor vehicle safety" plainly is proper.¹⁶ Since the government's uncontested allegations established that the defect was present for only two model years, it was inferrable that the defect was readily correctable (an inference petitioner has not disputed). In these circumstances, the risk of accident or injury posed by this substantial steering defect clearly was not "reasonable."

Petitioner is wrong to suggest that review of the court of appeals' decision is warranted because the court's opinion does not "articulat[e] meaningful standards to guide the district courts in other cases"

¹⁶ The court of appeals emphasized the importance of the availability of summary judgment in an earlier Safety Act case, *United States v. General Motors Corp.*, *supra*, 518 F. 2d at 441 (footnotes omitted):

This court has recognized the "important function" served by summary judgment in avoiding "long and expensive litigation" and "curbing the danger that the threat of such litigation will be used to harass or to coerce a settlement." The vital role played by the summary judgment procedure is heightened in cases where the prospect of a lengthy trial itself endangers the effective vindication of the fundamental interests at issue. In defect notification enforcement actions, such delay may lead to needless deaths and injuries. * * *

(Pet. 15). The question whether a defect relates to motor vehicle safety necessarily turns on the nature of the particular defect. In this case, the court of appeals simply concluded that the "uncontradicted facts demonstrate an 'unreasonable risk of accidents' stemming from the defect" (Pet. App. A, p. 2a). There was no occasion, in this case of first impression, for the premature enunciation of generalizable standards for applying the statutory language to all defects. The task of evolving such standards was appropriately left to case-by-case adjudication. In any event, failure to state a precedentially significant rule hardly is ground for review on certiorari by this Court.

Petitioner asserts that the decision of the court of appeals "raises significant due process problems" because it may affect the ability of manufacturers to obtain preliminary injunctions against enforcement orders and thereby toll the accrual of a statutory penalty.¹¹ There is no constitutional problem. If, as petitioner apparently believes, the decision below stands for an interpretation of the statute that is

¹¹ A manufacturer that refuses to comply with an enforcement order is subject to a civil penalty. 15 U.S.C. (1970 ed. and Supp. V) 1398. But a district court may toll the accrual of the penalty by granting a preliminary injunction. 15 U.S.C. (Supp. V) 1415(c)(1). These provisions were sustained as constitutional in *Ford Motor Co. v. Coleman*, 402 F. Supp. 475 (D. D.C.), affirmed, 425 U.S. 927. Such preliminary injunctions have issued in *United States v. Ford Motor Co.*, No. 76-29 (D. D.C.), and *United States v. Ford Motor Co.*, 421 F. Supp. 1239 (D. D.C.), appeals pending, C.A. D.C., Nos. 76-2062, 76-2063, 77-1378.

unfavorable to manufacturers, any difficulty they would have in obtaining preliminary injunctions would simply reflect the balance of legal factors that relate to a finding of probable success on the merits. But since, as petitioner itself argues (Pet. 15), the decision below does not purport to set standards for adjudicating future cases (other than to emphasize that adjudications must rest upon the particular defect involved in each case), there is no basis for any speculation concerning the ability of manufacturers in the future to avoid the statutory penalties for refusal to comply with enforcement orders.¹² Such speculation affords no ground for review of this case.¹³

¹² Petitioner itself was not faced with the problem it raises, because the special statutory provision for tolling the accrual of the penalty during litigation was not enacted until after this action commenced.

¹³ There was no disagreement among the panel members of the court of appeals that the district court erred in entering judgment against the government. Although he dissented in part from the *per curiam* opinion, Judge Leventhal concluded that the district court's decision was based upon an incorrect allocation of the burden of proof (Pet. App. A, pp. 21a-26a, 31a-32a).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

BARBARA ALLEN BABCOCK,
Assistant Attorney General.

WILLIAM KANTER,
NEIL H. KOSLOWE,
Attorneys.

DECEMBER 1977.